

09/095,565

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of inventors Ketner et al.

Serial No. 09/904,698

Filed: 07/13/01

Group Art Unit: 4755

Examiner: Hill

For: ***"USE OF GENE PRODUCT OF ADENOVIRUS EARLY REGION 4 ORF-6 TO INHIBIT REPAIR OF DOUBLE-STRAND BREAKS IN DNA"***

Mail Stop Non-Fee Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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STATEMENT TO ACCOMPANY AMENDMENT UNDER 37 C.F.R. §1.111

Sir:

In response to the Office Communication mailed on 12/16/2003, Applicant submits the following:

- 1) The first Office Action for this case was mailed on 02/11/03, and a response to that Office Action was timely filed on May 12, 2003. A copy of the USPTO date-stamped receipt and response are included herewith as **Exhibit A**.
- 2) On September 5, 2003, Applicant received a telephone call from Examiner Myron Hill asking whether or not a response had been filed in the case. Examiner Hill stated that there was no record of a response having been filed in the USPTO database. Applicant informed the Examiner that a response had been timely filed, and, in response to a request from the Examiner, Applicant transmitted to the Examiner by facsimile a copy of the response that was filed, together with a copy of the amendment transmittal letter, a copy of the original postcard, and a copy of the date-stamped postcard, date-stamped "May 12, 2003" by the USPTO, thus showing that the amendment had been timely filed. (A copy of the above items and the letter sent to the Examiner are included herewith as **Exhibit B**.) At that time, it was the understanding of the undersigned that the USPTO had likely lost the copy of the response that was filed on May 12, 2003.

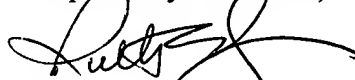
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3) Applicant subsequently received an Office Communication mailed on 12/16/2003. That Office Communication states that "The amendment to the claims filed on 5 September 2003 does not comply with the requirements of 37 CFR 1.121(c) because a complete listing [of] pending claims is not presented..." (emphasis added). Applicant submits that the date of Sept. 5, 2003, is incorrect; the correct date of filing is May 12, 2003. Applicant contacted Supervisory Patent Examiner James C. Housel on December 22, 2003. Examiner Housel suggested that Applicant submit a revised amendment as a courtesy to the Office, and that Applicant request correction of the date of filing of the amendment that is currently entered in the USPTO PAIR system (Sept. 5, 2003) to the correct date, May 12, 2003.

4). Therefore, Applicant respectfully submits that the correct date of filing of the amendment is May 12, 2003. Because the correct date of filing is prior to the implementation of the rules that require a listing of claims (the rules became effective July 30, 2003), Applicant should not be required to supply such a listing. However, as a convenience to the Office and to facilitate data-capture for the Image System, Applicant herewith submits a revised version of the amendment as filed on May 12, 2003, in which a listing of the claims is given, which is attached as Exhibit C. The content of the amendment is identical to the amendment that was filed on May 12, 2003, other than formal changes that have been made in order to comply with the new format that became effective on July 30, 2003.

5) Finally, Applicant requests that the date of filing of the amendment be changed in the internal PAIR system of the USPTO to reflect the correct filing date of the amendment, i.e. May 12, 2003. Applicant submits that this is necessary because the date may affect future prosecution of the case in a deleterious manner (e.g. the calculations for patent term adjustment) and therefore must be corrected.

Respectfully submitted,



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